

**STRATEGIC PLANNING COMMITTEE**  
**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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United States Bankruptcy Court  
Southern District of New York

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United States Bankruptcy Court  
Southern District of New York

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**Reflections on Strategic Planning**

**MISSION STATEMENT**

**The purpose of the United States Bankruptcy Court for the Southern District of New York is to provide, *economically*, a fair, *consistent* and effective forum for the protection and marshaling of estate assets, the discharge or adjustment of debts, and the timely distribution of property or securities, *in accordance with applicable law*.**

**HISTORY:**

Critical to the process of strategic planning is an articulation of the reason for the court's existence. The "mission statement" unites the objectives of the court with the legitimate needs of constituents. The court's mission statement was formulated by its Strategic Planning Committee at its second annual meeting on August 14, 1996. In January of this year, the mission statement was modified in two material ways. The first change was made in response to a request raised by the newly-created White Plains Strategic Planning Committee<sup>1</sup> at its meeting in

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1. Until April 1997, there was a single Strategic Planning Committee. It was decided in 1997 that there might be issues and imperatives in the White Plains courthouse which differed from those in the New York City courthouse. Accordingly, a White Plains committee was appointed. Where necessary to differentiate the two committees, this report will refer to the committees as the "White Plains Strategic Planning Committee" and the "New York City Strategic Planning Committee."

April 1997.<sup>2</sup> The word “consistent” was added to line three. *Consistent* here implies an expectation of uniformity in procedures and approach; it is not meant to straitjacket judges in their interpretation of the law. In addition, the word “economically” was added to convey the importance of administering estates for the benefit of the intended beneficiaries of the Bankruptcy Code.

## **PROGRESS REPORT:**

The generative force for all strategic planning is the desire to better serve users of the court. The discussion among court users, court personnel and the judiciary which is the touchstone of strategic planning has let bloom mutual respect for one another’s responsibilities, concerns and needs.

Periodically it is important to set down the accomplishments generated by the strategic planning process so that we can judge whether it has borne sufficient fruit to warrant its continuation in the present format. So before we turn to the new initiatives we pause to look backwards.

- ▶ *Adoption of Scheduling Orders.* The board of judges, in an attempt to aid in expediting the reorganization process, formulated and adopted a general scheduling order for entry in chapter 11 cases. This order calls for an initial case management conference to consider the efficient administration of the case. Topics to be included in the conference are: the retention of professionals, creation of a committee to review budget and fee requests,

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2. The White Plains Strategic Planning Committee decided that it was important to achieve a district-wide mission statement and, accordingly, adopted the mission statement drafted at the inaugural strategic planning session of the New York City Strategic Planning Committee; however, the White Plains Committee asked the New York City Committee to consider a change to the mission statement. The change described in the text was this committee’s response to that request.

uses of alternative dispute resolution, timetables, and scheduling of additional case management conferences in the case.

- ▶ *Broader use of Notices of Presentment.* To encourage more efficient use of judicial, attorneys', and parties' time, the board of judges also adopted a more comprehensive "Notice of Presentment" procedure permitting submission to the court, with an appropriate proposed order, of certain enumerated motions (of a type usually unopposed), where it is reasonably anticipated that the motion will be uncontested.
- ▶ *Chapter 7 Case Conferences and Interim Distributions to Creditors.* To assist creditors in chapter 7 cases in receiving distributions sooner rather than later, the judges have called case conferences and have insisted on interim distributions in asset cases where appropriate. These periodic case conferences with the chapter 7 trustees provide a platform for oversight of trustees' duties in completing their legal and administrative obligations in asset cases.
- ▶ *Creation of a Court Services Coordinator and Explanatory Pamphlets.* Making the clerk's office more user-friendly has been a primary focus, resulting in the appointment of a Court Services Coordinator to assist attorneys and *pro se* filers with the intricacies of court procedure. Comprehensive, easy-to-understand pamphlets were developed and printed to aid court users. The success of these innovations is evidenced by their having been emulated by other courts.
- ▶ *Training of Bench and Staff.* The court has taken steps toward becoming a "learning organization." To ascertain the training needs of staff required to meet the court's commitment to its constituents, the court conducted a formal assessment of in-house training needs in January 1997. Sessions were scheduled in areas such as communications, transition, technical skills and office skills, e.g. telephone use and business writing and are continuing to date. Judges have received mediation training and are scheduled this month to receive training in communications skills.
- ▶ *Educational Outreach.* To improve the practice of bankruptcy law, the board of judges has sponsored a variety of seminars at the Manhattan courthouse as well as in Poughkeepsie. Topics explored have included, among others, mediation, chapter 13 cases procedures and administration, electronic filing of cases, and developments in cross-border insolvency law. The court has not limited its educational efforts to seminars but, with the significant contribution of New York County Lawyers' Association, has distributed a newsletter available not only to that

association's members, but to anyone for the asking. In addition, the court has published regularly-appearing articles in the Managing Attorneys' / Clerks' Newsletter and the New York Law Journal.

- ▶ *Procedural Uniformity and Improved Paper Flow.* All judges have stepped up their attempts to operate more consistently from chambers to chambers. Toward this end in part, the Local Rules have been amended to make more uniform the best procedures employed by various judges. Another revision of the Local Rules is almost completed and will be issued shortly to further this effort. Communications and procedures between the courtroom deputies from the various chambers has been enhanced through training and cross-training. Through the effort of the courtroom deputies and case administrators, paper flow to and from chambers has improved significantly. Dialogue with the District Court Clerk's Office has resulted in timely facsimile transmission to the bankruptcy judges of opinions and orders affecting their cases entered by the District Court.
- ▶ *Procedural Streamlining.* Particular processes and procedures utilized routinely in the court have been streamlined and duplicate efforts eliminated. Claims are entered on the claims register and in the appropriate files within ten working days. Accordingly, the reliability of claims information has increased.
- ▶ *Electronic Filing Project.* As 1997 came to a close, the preliminary success of the Electronic Case Filing Project exceeded expectations. (As of December 31, 1997, a date which preceded the general applicability of electronic filing to chapter 11 cases, the number of "hits" to the court's website was an astounding 23,000!) As of this writing, 275 cases are electronically filed. Since January 5, 1998, all chapter 11 cases filed in Manhattan have been handled electronically. The court has initiated a variety of programs to educate and encourage members of the bar, as well as the judiciary, to participate in the project. The programs include: weekly training sessions at the court for non-court users; presentations by the Clerk and the Systems Manager to bar associations, law firms and affiliated organizations; on-site support; and demonstrations of the system or presentations on what it can do not only to numerous other bankruptcy judges but to district court judges as well.
- ▶ *U.S. Trustee Improvements Emanating From New York City Strategic Planning Committee.* The Strategic Planning Committee concluded previously that in order to identify which chapter 11 debtors are true candidates for reorganization, it would be helpful if the U.S. Trustee had on staff accountants to review results of operations. Communications from the court to the Executive Office of the United

States Trustee were enthusiastically received, resulting in the U.S. Trustee's hiring in this district two accountants with a financial analyst probably to follow. Another area of cooperation between the court and the U.S. Trustee is the agreement of the board of judges to set aside reserved days for U.S. Trustee motions so as to increase the availability of staff attorneys to attend to other matters.

## **THE PROCESS:**

Part of the strategic planning process involves coming to a consensus regarding the attributes and behaviors that communicate the values by which the court wishes to be known.

They are:

- ▶ Competent and professional judges and court staff
- ▶ Fairness and impartiality in dealing with constituents
- ▶ Fairness and impartiality in administration of cases
- ▶ Consistency of approach
- ▶ Economy and cost-effectiveness in approach
- ▶ Courteous treatment of constituents
- ▶ Responsiveness to the needs of constituents

## **THE KEY RESULTS AREAS:**

An implicit element of the mission statement is identification of the court's critical functions. These functions aim to highlight broad, yet distinctive, areas in which successful achievement would be critical to accomplishing the court's mission. In other words, the critical functions pinpoint where the court must focus its resources and energy.

Key Results Areas were arrived at by general consensus during the meeting in August 1996. With certain adaptations, deletions and additions, the original Key Results Areas remain the most relevant places for the implementation of change.

## **I. Resolving Disputes**

**A. Reducing the length of time for the resolution of adversary proceedings.** The sense of the Committee is that this goal has been largely met. The entire court is working in cooperation to adjudicate and close all aged adversary proceedings. In addition, all judges are conducting pretrial proceedings aimed at keeping more recently instituted adversary proceedings on course. A lack of national statistical information, however, has led to an inability to compare Southern District of New York performance with national averages. In addition, the executive information management system previously devised for the court needs revamping to allow better tracking of performance. New formats for statistical reporting are being devised so as to give an accurate statistical reflection of the tremendous energy spent in reducing the length of time for resolution of adversary proceedings.

## **B. Improving the chambers' calendar program.**

This goal has been partially met by the Electronic Case Filing System which has an excellent calendar program. However, the more commonly used judicial calendar program which was installed in early 1993 still needs improvement. A project is underway to convert the chambers' individual calendar systems into the electronic format so that electronically filed cases will be automatically entered onto the calendar and entries for the non-electronic cases will be made onto the electronic calendar. This will eliminate the need for entering, as the court does

now, calendar information for the electronically filed cases and will make accurate calendar information readily available to all users of the electronic filing system. The court is in the process of formulating the needs of the electronic calendar to adequately serve the judges and users of the court. The court, working in conjunction with the Administrative Office of the United States Courts, will develop, write, and conduct a feasibility test on the practicability of the new program. If the feasibility test is acceptable, implementation of the new calendar system will be completed within the calendar year 1998.

## **II. Case Management**

### **Shortening the duration of cases in all categories: a court-wide goal.**

The targets for attainment by the court have been revised from the goals originally set to better reflect what the Committee felt was appropriate. The italicized language represents the additions, the highlighted language, the deletions.

#### **Chapter 11 cases:**

**> \$100,000,000 and/or public company; 90% will be confirmed, dismissed, or converted within 18 months; 90% of the confirmed cases will have final decree within **24** 12 months after confirmation.**

**< \$100,000,000: 90% will be confirmed, dismissed, or converted within 12 months; 90% of the confirmed cases will have a final decree 120 days thereafter.**

***New goal/special study: Track < \$100,000,000 cases with more than 25,000 creditors.***

***Assess whether this category has significance for special case management.***

**Chapter 7 cases:**

**no-asset: 90% will have final report decree within 120 days**

**asset business: 75% will have final report within 18 months from time of filing or conversion, followed by 75% have affidavit of distribution in 24 months and closing report within 6 months thereafter, and a final decree within 7 calendar days after the filing of the closing report.**

**asset, non-business: 75% will have final report within 9 months of filing or conversion followed by affidavit of distribution and closing report within 12 6 months thereafter, and a final decree within 7 calendar days after the filing of the closing report.**

**Short term goal: reduce pendency of cases by 15% from current median.**

**Chapter 13 cases:**

**75% will be converted, dismissed, or confirmed by the first confirmation hearing (150 210 days).**

The judges, as a routine matter, have been signing initial case conferencing orders in chapter 11 cases and adjourning the conferences from time to time so as to have regular, periodic reporting on the progress of those cases. Case conferences have also been widely utilized to track the progress of confirmed chapter 11 cases not yet closed and chapter 7 cases which appear

sufficiently administered to warrant either an interim distribution or closing. The United States Trustee, trustees and attorneys are all cognizant of the court's push for limiting the duration of cases pending in the court. Again, the sense of the Committee is that this court-wide goal has been met. However, measurable statistical comparisons of available information are required to determine the court's success in meeting the specific goals for each chapter. The court is developing methods to gather the information necessary for such comparisons.

#### **IV. Processing and Disseminating Information**

##### **A. Getting filed papers into chambers by close of business day, prior to the hearing.**

This has become standard operating procedure and has been removed as a goal. Chief Judge Brozman asked both local bar associations to issue reminders to their members to deliver chambers' copies directly to chambers.

##### **B. Expanding existing PACER system to include the most recent 12 months of case docket information (now 7 months), by October 1996. Reducing by 50% the maximum time required to get BANCAP data onto PACER.**

The first aspect of this goal was met successfully in October 1995 and has become the standard. The second aspect remains part of an on-going effort by the Administrative Office of the United States Courts to pilot a PACER system which will mirror the live database used by the clerk's office case administrators. When achieved, docketed information will become immediately available through the PACER system. Meanwhile, the Committee hopes with the installation of additional BANCAP disk space, the time required can be reduced further.

##### **C. Standardizing hours of operation for all court departments.**

In October 1997 the records department opened without interruption from 9:00 a.m. to

4:30 p.m. The one-half hour before the records department opens and the one-half hour after it closes to the public are utilized for filing so as to minimize disruptions in service during the regular hours of public availability. This is now standard operating procedure and is, therefore, removed as a goal.

**D. Beginning a collaborative pilot project between court and appropriate law firms for the electronic filing of documents via the Internet in a large test case.**

Commencing with the BMI Transport case in November 1996, the majority of chapter 11 cases filed were administered electronically. Now, all voluntary and involuntary chapter 11 cases, all SIPA cases, and all section 304 ancillary cases are administered electronically. Only attorneys and court employees are permitted to file documents electronically, although, through the court's home page, "read only" use of the system is available to others. The entire case administration staff has been trained in electronic filing. Additionally, the court staff is holding thrice weekly training sessions for attorneys and paralegals on use of the system. The ultimate goal is to have all dockets and documents filed in all bankruptcy cases available via the Internet. This is no longer a pilot project, but the court's administrative future. To make this possible, most of the court's available resources will be spent in continuing this effort.

The system not only makes service of papers far easier for attorneys than in the "hard copy" cases, but it eliminates the need for the court to perform certain tasks at all; for example, as all orders are entered electronically, it will no longer be necessary for chambers' staff to (i) maintain an informal "orders log" recording orders signed each day by the judge or (ii) answer numerous daily telephone inquiries regarding whether or not a particular order has been signed. This will free up staff to perform other more important functions such as case management.

In order to fully integrate electronic filing into the realm of “prepackaged” bankruptcy cases, the Committee determined to have prepared a pamphlet explaining what is necessary for the smooth movement of a prepackaged case and how to administer that case electronically. A subcommittee composed of Donald Bernstein, Marcia Goldstein, Carolyn Schwartz, Cecelia Morris, Kathleen Farrell, and Judges Brozman, Garrity and Lifland has already met to discuss the parameters for this project. Preliminary drafting is underway. The creation of the planned guide should be completed by the summer of this year.

**Added goal: Setting up bankruptcy users’ groups in each of the two local bar associations.**

Attorney representatives on the committee were asked to act as liaisons with the clerk’s office to insure that on-going electronic projects meet the needs of constituents. Marcia Goldstein has asked Bari Mattes and Peter Goodman to represent the Association of the Bar of the City of New York. Joanne Gelfand has invited Lisa Napoletano and Merrill Clark from New York County Lawyers’ Association to fulfill that same function. Joining these four will be Michael Walsh, of Weil, Gotshal and Manges and Carolyn Schwartz, the United States Trustee.

## **V. Education**

**A. Creating and updating materials designed to educate laymen, lawyers, and other newcomers to the court. Pamphlets, kiosk, and video are possibilities.**

The Clerk and Systems Manager visited the Federal District Court in Washington, D.C. to investigate the possibility of copying their state-of-the-art model electronic kiosk. Preliminary reports had been positive as to its usefulness for that court but the Administrative Office of the Courts no longer supports the software. The D.C. court, while happy with the product, did not

feel it was an exportable system. More importantly, the electronic filing system, with its accompanying “home page” has already surpassed in quality and timeliness the information displayed on the kiosk. The Committee determined to further develop the home page in lieu of a kiosk or additional pamphlets.

**B. Increasing availability of private bar to aid indigent debtors and creditors.**

The Association of the Bar of the City of New York already has a pro bono bankruptcy panel and administrator in place. New York County Lawyers’ Association agreed, following the most recent meeting of the New York City Strategic Planning Committee, to form a pro bono subcommittee of its bankruptcy committee to handle both commercial and consumer issues. Communication between that bar association and Chief Judge Brozman is moving that project along.

**C. Making phone system more user friendly.**

Although some improvements have been made to the system, it was the sense of the Committee that more needs to be done. Kathleen Farrell has been designated by the Committee to learn what is available to improve the system. In addition, the automated system, including its voice mail features, will be implemented in all chambers as soon as it is feasible.

**CONCLUSION:**

This report lays out the progress made in better administering the court through the use of strategic planning. Anticipated future endeavors have also been described. Inasmuch as strategic planning is an ongoing, annual process, future reports, like this one, will reflect new goals and past achievements.

The Strategic Planning Committee thanks all of its members and sub-committees for their time and energetic work on behalf of the court.